date on which such separation actually commenced but that does not require determination by me.

On this petition, I do not have to discuss *Fraser v. Fraser*[4] on limping marriages or marriages which have irretrievably failed in view of my finding of fact in this case because this marriage can only be said to have commenced limping on some date yet to be decided on or after 28th July, 1962 and a petition can only succeed on a petition presented not less than 7 years after such date. The petition is accordingly dismissed with costs.

Petition dismissed.

Solicitors: *Leicester & Chen; Boswell, Hsieh & Lim.*

OLI MOHAMED v. KEITH MURPHY & ANOR

[O.C.J. (Choor Singh J.) July 18, 1969]

[Singapore — Suit No. 181 of 1968]

Negligence — Collision on highway — Cross-roads of equal status — Innocent 3rd party — Proof of negligence — Common law — Recovery of damages.

The plaintiff was the owner of No. 196 Bencoolen Street, Singapore. On March 29, 1967 the 1st defendant drove his car and the 2nd defendant drove his taxi so negligently into one another that both vehicles immediately thereafter ran into and collided with and damaged the plaintiff's premises. The 1st defendant did not enter appearance and was absent at the trial. The 2nd defendant was absent but was represented by counsel who did not call any witness. The plaintiff did not call any witness. However it was not in dispute that the collision took place at the intersection of Albert Street and Bencoolen Street and that both vehicles went off the road and hit the plaintiff's premises.

Held: (1) where there is a collision at cross-roads of equal status as in this case, the inference to be drawn in the absence of special circumstances (there was no evidence of special circumstances in this case) is that both drivers have been equally negligent. There was therefore a *prima facie* case of negligence against the second defendant;

(2) as the plaintiff is an innocent third party it is enough for him to prove negligence against the second defendant even if it is not the whole of the negligence. By the common law the plaintiff is entitled to recover the whole of the damages awarded in this case;

(3) the plaintiff was entitled to $2,750 in the form of damages with interest at 6% from July 12, 1967.

Cases referred to:—

(1) *Baker* v. *Market Harborough Industrial Co-operative Society Ltd.* [1953] 1 W.L.R. 1472.

(2) *Bray* v. *Palmer* [1953] 2 All E.R. 1449.

(3) *Dorrington* v. *Griff-Fender (Swansea) Ltd.* [1953] 1 All E.R. 1177.

(4) *France* v. *Parkinson* [1954] 1 All E.R. 739.

(5) *Dingle* v. *Associated Newspapers Ltd.* [1961] 2 Q.B. 162.

(6) *Drinkwater* v. *Kimber* [1932] 2 Q.B. 281.

CIVIL SUIT.

H.E. Cashin for the plaintiff.

Tan Kim Seng for the 2nd defendant.

Choor Singh J.: In this suit the plaintiff claims damages for injury to the plaintiff's premises alleged to have been caused by the negligence of the first defendant and by the negligence of the second defendant or alternatively by the negligence of one or other of them in the driving of their respective motor vehicles.

The facts are these. The plaintiff is the owner of premises known as No. 196 Bencoolen Street, Singapore, hereinafter referred to as "the said premises". On the 29th March 1967 the first defendant drove motor car ST.441 and the second defendant drove motor taxi No. SH.2884 so negligently into one another that both vehicles immediately thereafter ran into and collided with and damaged the said premises.

The first defendant did not enter appearance and was absent at the trial. The second defendant was also absent at the trial but was represented by counsel who did not call any witness. The plaintiff did not call any eye witness of the accident. Counsel for the plaintiff attempted to put in evidence the reports made to the police by the first and second defendants but I ruled that these reports were inadmissible under the Evidence Ordinance as the makers of the reports had not given evidence. It is generally not understood that such a report is admissible for the sole purpose of impeaching the credit of the person who made the report and for no other purpose. Hence if the person who made the report does not give evidence at the trial his report is inadmissible. In the result there was no evidence at all before the court as to the circumstances under which the collision took place.

However, it is not in dispute that motor car No. ST.441 driven by the first defendant was travelling along Albert Street from the direction of Selegie Road and proceeding towards Queen Street; that taxi No. SH.2884 driven by the second defendant was travelling along Bencoolen Street from the direction of Jalan Besar and proceeding towards Bras Basah Road; that the collision between the two vehicles took place at the intersection of Albert Street and Bencoolen Street; and that after the collision both vehicles went off the road and hit the said premises which are on the left side of Bencoolen Street as one faces Bras Basah Road.

Counsel for the second defendant submitted that the burden of proof was on the plaintiff and as he had called no evidence to show how

the accident occurred, the claim of the plaintiff should be dismissed. I am unable to accept this submission. If two motor cars collide in the centre of the road, the inference is, in the absence of evidence enabling the court to draw any other conclusion, that the drivers of both were equally to blame, and it is not a proper decision to hold, in the absence of evidence enabling the blame to be fixed upon one driver or the other, that no sufficient case has been established against either. See *Baker* v. *Market Harborough Industrial Co-operative Society, Ltd.*[1] and *Bray* v. *Palmer.*[2] In my opinion the same principle applies in the case of a collision at cross roads.

Counsel for the plaintiff submitted that the second defendant should have given the right of way to the first defendant's car because it was coming from the second defendant's right hand side; that the failure of the second defendant to do so was the cause of the accident and that the second defendant was therefore solely responsible for the accident and for the damage to the said premises.

Counsel for the second defendant submitted that Bencoolen Street is a major road; that as the first defendant was coming out of a minor road on to a major road he should have done so only when it was safe for him to do that; that the accident was caused by the first defendant's failure to observe taxi SH.2884 travelling along Bencoolen Street and that the accident was due entirely to the negligence of the first defendant.

There was no evidence before the court that Bencoolen Street was a major road in March 1967 when this accident occurred. It is true that Bencoolen Street is today a major road because all traffic from Upper Serangoon coming towards town has to use Bencoolen Street but this was not so at the time of the accident. According to the police sketch plan Bencoolen Street is 63 feet 4 inches wide on the west side of the intersection and 53 feet one inch wide on the east side of the intersection. Albert Street is 57 feet 2 inches wide on the south side of the intersection and 50 feet 3 inches wide on the north side of the intersection. There are no traffic lights installed at this intersection and traffic is thus uncontrolled. The accident took place at night at about 1 a.m. when there could have been hardly any traffic along either of these roads.

In my opinion this was a collision at cross-roads of equal status. There is a clear obligation to take special care at cross-roads and this is so even if one of the cross-roads is a major road. The driver of a vehicle which approaches a major road from a side road ought to give way to traffic on the major road, but the driver of a vehicle on the major road is not absolved from the duty of taking care to avoid collision with a vehicle emerging from a side road. See *Dorrington* v. *Griff-Fender (Swansea) Ltd.*[3] Where there is a collision at cross-roads of equal status, as in this case, the inference to be drawn in the absence of special circumstances is that both drivers have been equally negligent. See *France* v. *Parkinson.*[4] There is no evidence of any special circumstances in this case. A collision did take place between two motor cars at that wide and spacious cross-road. On those facts there is a *prima facie* case that both the drivers were negligent. I am therefore satisfied that the plaintiff has made out a *prima facie* case of negligence against the second defendant and as this *prima facie* case has not been displaced, the plaintiff must succeed. As the plaintiff is an innocent third party it is enough for him to prove negligence against the second defendant even if it is not the whole of the negligence.

Counsel for the second defendant submitted that if the court holds that both defendants were equally negligent, then the judgment against the second defendant should be only for 50 per cent of the total sum assessed as damages in this case. In my opinion this submission also fails. It is clear law that if each of several persons, not acting in concert, commits a tort against another person substantially contemporaneously and causing the same or indivisible damage, each tortfeasor is liable for the whole damage. See *Dingle* v. *Associated Newspapers Ltd.*[5] and *Drinkwater* v. *Kimber.*[6] In *Dingle's* case, Devlin L.J. said at page 188:—

> ". . . . Where injury has been done to the plaintiff and the injury is indivisible, any tortfeasor whose act has been a proximate cause of the injury must compensate for the whole of it. As between the plaintiff and the defendant it is immaterial that there are others whose acts also have been a cause of the injury and it does not matter whether those others have or have not a good defence. These factors would be relevant in a claim between tortfeasors for contribution, but the plaintiff is not concerned with that; he can obtain judgment for total compensation from anyone whose act has been a cause of his injury. If there are more than one of such persons, it is immaterial to the plaintiff whether they are joint tortfeasors or not. If four men, acting severally and not in concert, strike the plaintiff one after another and as a result of his injuries he suffers shock and is detained in hospital and loses a month's wages, each wrongdoer is liable to compensate for the whole loss of earnings. If there were four distinct physical injuries, each man would be liable only for the consequences peculiar to the injury he inflicted, but in the example I have given the loss of earnings is one injury caused in part by all four defendants. It is essential for this purpose that the loss should be one and indivisible; whether it is so or not is a matter of fact and not a matter of law . . . . ."

By the common law the plaintiff is entitled to recover the whole of the damages awarded in this case.

The plaintiff proved that the repairs to the said premises cost him the sum of $2,650. He stated further that he had engaged an architect to prepare a plan for carrying out the repairs and that the architect had charged him $516 of which he had paid $100 and the balance was still due to the architect. When the architect in question, a Mr. Kwan, gave evidence he stated that he had not received any payment at all and that whole sum of $516 was still due. It would appear that the plan was prepared by one Mr. Siddique and although it was signed by Mr. Kwan it was Mr. Siddique who was in charge of the repairs and the plaintiff's evidence was that he had paid $100 to Mr. Siddique. Although these repairs were carried out some two years ago the remaining sum due to the architect has not yet been paid. In my opinion the whole cost of the plan to the plaintiff was only $100. I would therefore award the plaintiff the cost of the repairs amounting to $2,650 and another $100 being the cost of the plan.

The plaintiff also claims interest on the amount awarded as damages from the date of the accident. In my opinion the plaintiff is entitled to interest from the date on which payment for the repairs was made. The repairs were completed and payment made to the contractor on the 12th July 1967. A demand for payment was then made to the The Ocean Accident and Guarantee Corporation Ltd. the insurers of the second defendant's vehicle but this insurance company denied liability on the ground that the accident was caused entirely by the negligence of the first defendant. In my opinion the plaintiff is entitled to interest on the sum of $2,750 at 6 per cent per annum as from the 12th July 1967. Accordingly there will be judgment for the plaintiff in the sum of $2,750 together with interest thereon at 6 per cent per annum as from the 12th July 1967. The second defendant will also pay the plaintiff's costs of this action as taxed.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

CHEONG KONG ENTERPRISE CO. SDN. BHD. v. FOONG SEONG MINES LTD. & ORS.

[F.C. (Ong Hock Thye C.J. (Malaya), Gill & Ali F.JJ.) July 21, 1969]

[Ipoh—Federal Court Civil Appeal No. 18A of 1969]

Practice and Procedure — Specially indorsed writ — Application for writ and statement of claim to be struck out — Order that writ and statement of claim be struck out but matter adjourned into open court for further argument — Whether final judgment.

Land Law — Caveat — Application for extension of private caveat — Whether appellant has locus standi to be heard in relation to caveat — Land Code (Cap. 138), ss. 326 and 327.

In this case the proprietors of certain mining lands had leased the land to certain miners. Subsequently the proprietors purported to transfer the lands to a 3rd party. Thereupon the miners lodged a private caveat against the land. Subsequently they commenced an action against the proprietors and the 3rd party and by summons in chambers they applied to court for an extension of the caveat. This was granted and the caveat was extended and "remain in force until the final disposal of this suit." An application was made by the proprietors for the writ and statement of claim to be struck out and after hearing the parties the court ordered the writ and statement of claim to be struck out, but ordered that the matter be adjourned into open court for further argument. The miners were advised to apply for a further extension of the caveat. They did so and an order was made that the caveat remain in force "till the final disposal of a fresh suit to be filed." The 3rd parties appealed against this order.

Held, dismissing the appeal: (1) the suit in this case had not been finally disposed of and therefore the miners' application for further extension of the caveat was wholly misconceived and unnecessary;

(2) an application for the extension of a private caveat concerns only the caveator and the caveatee and the appellant therefore had no *locus standi* in the appeal;

(3) no order had been made for the renewal of the caveat and until such an order was made the caveat would remain on the register.

Case referred to:—

(1) *In re Riddell, ex parte Earl of Strathmore* (1888), 20 Q.B. 512, 516.

FEDERAL COURT.

Chin Swee Onn for the appellants.

F.C. Arulanandom for the 1st respondent.

P.P. Dharmananda for the 2nd respondents.

Ong Hock Thye C.J. (delivering the judgment of the court): We dismissed this appeal at the hearing and now state more fully the grounds of our decision.

Pursuant to an agreement made on May 20, 1964 between Foong Seong Mines Limited (hereinafter called the miners) and the trustees abovenamed* (who are the registered proprietors of certain mining leases in the Mukim of Ulu Kinta) the miners were given permits, renew-

* the second respondents.